



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 31 2006

REPLY TO THE ATTENTION OF
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Beck, President
Beck Aluminum Corporation
300 Allen Bradley Drive
Mayfield Heights, Ohio 44124

Re: In the Matter of Beck Aluminum
Corporation
CAA Docket No. *CAA-05-2006-002022*

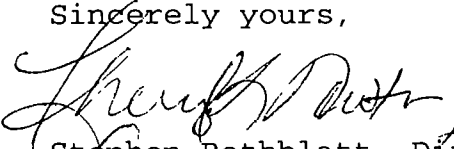
Dear Mr. Beck:

I have enclosed a complaint filed against Beck Aluminum Corporation (Beck), under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the regulations at 40 C.F.R. Part 63, Subpart RRR.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Mark Palermo, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-6082.

Sincerely yours,


Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

cc: George Baker, Cleveland Local Air Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Beck Aluminum Corporation
Mayfield Heights, Ohio

Respondent.

) Docket No. CAA-05-2006-0020 *js*
)
) Proceeding to Assess a Civil
) Penalty under Section 113(d)
) of the Clean Air Act,
) 42 U.S.C. § 7413(d) *REG-113*
)
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Beck Aluminum Corporation Incorporated, (Beck) a company doing business in Ohio.

Statutory and Regulatory Background

4. Under Section 112 of the Act, 42 U.S.C. § 7412, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production at 40 C.F.R. Part 63, Subpart RRR, 40 C.F.R. §§ 63.1500 through 63.1519 (Subpart RRR NESHAP or Subpart RRR requirements).

5. Section 112(b)(1) of the Act, 42 U.S.C. § 7412(b)(1), identifies 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin) and dibenzofurans (furan) as Hazardous Air Pollutants (HAP) under the

Act.

6. The Subpart RRR NESHAP applies to owners or operators of each "secondary aluminum production facility" as defined at 40 C.F.R. § 63.1503.

7. Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9), defines "owner or operator" to mean any person who owns, leases, operates, controls, or supervises a stationary source.

8. The Subpart RRR NESHAP at 40 C.F.R. § 63.1500(c) states that the Subpart RRR requirements pertaining to dioxin and furan emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to certain affected sources located at a secondary aluminum production facility that is an area source of Hazardous Air Pollutants (HAP). Among the affected sources covered by the dioxin/furan Subpart RRR requirements are all new and existing "sweat furnaces."

9. "Sweat furnace" is defined at 40 C.F.R. § 63.1503 as "a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting point aluminum from the scrap while the higher melting point iron remains in solid form."

10. The Subpart RRR NESHAP, at 40 C.F.R. § 63.1501(a), states that the owner or operator of an existing affected source must comply with the requirements of Subpart RRR by March 24, 2003.

11. The Subpart RRR NESHAP, at 40 C.F.R. § 63.1505(f), provides that the owner or operator of a sweat furnace at a secondary aluminum production facility must not discharge or

cause to be discharged into the atmosphere emissions in excess of 0.80 nanograms of dioxins/furans TEQ per dry standard cubic meter (3.5×10^{-10} grams per dry standard cubic feet) at 11 percent oxygen. However, 40 C.F.R. § 63.1505(f)(1) provides that the owner or operator is not required to conduct a performance test to demonstrate compliance with this dioxin/furan emission standard, provided that on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of 1600 degrees Fahrenheit or greater.

12. The Subpart RRR NESHAP, at 40 C.F.R. § 63.1506(a)(2), provides that the owner or operator of an existing sweat furnace that meets the specifications of 40 C.F.R. § 63.1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of this section on or after the compliance date of this rule. Under 40 C.F.R. § 63.1506(h), the owner or operator of a sweat furnace with emissions controlled by an afterburner must maintain the 3-hour block average operating temperature of the afterburner at or above: (i) the average temperature established during the performance test, or (ii) 1600 degrees Fahrenheit if a performance test was not conducted, and the afterburner meets the specifications of 40 C.F.R. § 63.1505(f)(1).

13. The Subpart RRR NESHAP, at 40 C.F.R. § 63.1510(b), requires the owner or operator of an affected source or emission unit to prepare and implement an Operation, Maintenance, and Monitoring (OM&M) Plan, and submit such plan to the permit

authority by the compliance date.

14. The Subpart RRR NESHAP, at 40 C.F.R. § 63.1510(g), requires the owner or operator of an affected source using an afterburner to comply with the Subpart RRR requirements to install, calibrate, maintain, and operate a device to continuously monitor and record operating temperature of the afterburner.

15. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

16. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

18. Remelt Services, Inc. has owned an aluminum processing facility at 6560 Juniata Avenue, Cleveland, Ohio ("Facility") for the period of at least 1999 to the present.

19. At all times relevant to the Complaint, Respondent's President, two vice-presidents, and legal counsel have been shareholders of Remelt Services, Inc.

20. From as early as September 2003 through December 2005, Respondent was the only customer of Remelt Services, Inc.

21. From as early as September 2003 through December 2005, one or more officers, employees, or agents of Respondent have conducted oversight of, and had supervisory authority over scrap smelting and aluminum reclamation operations, or "tolling operations" at the Facility.

22. From as early as September 2003 through December 2005, one or more officers, employees, or agents of Respondent have conducted oversight of, and had supervisory authority over the Facility's compliance with the Subpart RRR NESHAP.

23. By as early as September 2003 through December 2005, Respondent has had control of, and supervisory authority over Remelt Services, Inc. and the operations at the facility.

24. By as early as September 2003 through December 2005, Respondent has had control of, and supervisory authority over the Facility's actions concerning compliance with the Subpart RRR NESHAP.

25. By as early as September 2003 through December 2005, Respondent has been an "operator" of the Facility as defined by

Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9).

26. The Facility has a "secondary aluminum production facility" as defined in 40 C.F.R. § 63.1503.

27. The Facility's secondary aluminum production facility is an area source for HAP as defined in 40 C.F.R. § 63.2.

28. The NESHAP for Secondary Aluminum Production, at 40 C.F.R. Part 63, Subpart RRR, applies to the secondary aluminum production facility at the Facility.

29. The Facility's secondary aluminum production facility, RSI has a "sweat furnace" ("Furnace"), as that term is defined under 40 C.F.R. § 63.1503.

30. The Facility's Furnace is an "affected source" subject to the Subpart RRR requirements pertaining to dioxin and furan emissions and associated operating, monitoring, reporting and recordkeeping requirements.

31. The Facility's Furnace is an existing affected source under the Subpart RRR NESHAP.

32. Respondent has had control of, and supervisory authority over the Furnace's operations from a period beginning as early as September 2003 through to the present.

33. By as early as September 2003 through December 2005, Respondent has been an "operator" of the Furnace as defined by Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9).

34. An afterburner has been used at the Facility to control emissions from the Furnace.

35. A performance test of the Furnace and associated control device has not been conducted to establish compliance

with the dioxin/furan emission standard under 40 C.F.R. § 1505(f).

36. An afterburner has been used at the Facility to meet dioxin and furan emission control requirements under 40 C.F.R. § 63.1505(f)(1).

Count I

37. Complainant incorporates paragraphs 1 through 36 of this complaint, as if set forth in this paragraph.

38. The Subpart RRR NESHAP at 40 C.F.R. §63.1510(g)(1) specifies that for those owners or operators of an affected source using an afterburner to comply with the Subpart RRR requirements, the owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and requirements for continuous monitoring systems under 40 C.F.R part 63, subpart A.

39. On and after March 24, 2003, the Subpart RRR NESHAP required a device to be installed at the Facility and operated to continuously monitor and record operating temperature of the Furnace's afterburner consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and requirements for continuous monitoring systems under 40 C.F.R part 63, subpart A.

40. It was not until after August 26, 2004 that a monitoring system and operating temperature continuous recording device was installed, calibrated, maintained or operated for the Furnace's afterburner consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and 40 C.F.R part 63, subpart A.

41. As an operator of the Furnace, Respondent was required under the Subpart RRR NESHAP to install, calibrate, maintain and operate a monitoring system and operating temperature continuous recording device for the Furnace's afterburner consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and 40 C.F.R part 63, subpart A.

42. Respondent failed to have a monitoring system and continuous operating temperature recorder installed, calibrated, maintained and operated for the Furnace's afterburner while it was an operator of the Furnace, from a period that includes as early as September 2003 through August 2004, or a period of at least 10 months, consistent with the requirements of 40 C.F.R. §63.1510(g)(2), and 40 C.F.R part 63, subpart A.

43. Failure of an operator to install, maintain and operate a device that continuously monitors and records the afterburner operating temperature constitutes a violation of the requirements established under 40 C.F.R. §63.1510(g) and Section 112 of the Act, 42 U.S.C. §7412.

Count II

44. Complainant incorporates paragraphs 1 through 36 of this Complaint, as if set forth in this paragraph.

45. The Subpart RRR NESHAP, at 40 C.F.R. § 63.1510(b), requires the owner or operator of an affected source or emission unit to prepare and implement an OM&M Plan which contains the information required under § 63.1510(b). The owner or operator of an existing affected source must submit the OM&M Plan to the responsible permitting authority no later than the compliance

date established by §63.1501(a).

46. The responsible permitting authority under the Subpart RRR NESHAP is the Ohio EPA.

47. By March 24, 2003, a written OM&M Plan was required to be developed and submitted for the Facility's Furnace, and the Furnace must operate consistent with such OM&M Plan after such date.

48. Ohio EPA did not receive an OM&M plan for the Facility's Furnace until after September 13, 2004.

49. An OM&M plan for the Furnace which met the requirements of § 63.1510(b) was not submitted to Ohio EPA until after September 13, 2004.

50. As an operator of the Furnace, Respondent was required under the Subpart RRR NESHAP to ensure that an OM&M plan complying with 40 C.F.R. § 63.1510(b) was submitted to Ohio EPA for the Furnace, and that such Furnace operated in accordance with such plan.

51. Respondent failed to comply with the OM&M Plan submittal requirement while it was an operator of the Furnace, for a period lasting at least September 2003 up through September 13, 2004, or a period lasting at least 11 months.

52. Late submission of the OM&M Plan constitutes a violation of the requirements established under 40 C.F.R. §63.1510(b) and Section 112 of the Act, 42 U.S.C. §7412.

Count III

53. Complainant incorporates paragraphs 1 through 36 of this Complaint, as if set forth in this paragraph.

54. The Subpart RRR NESHAP, at 40 C.F.R. §63.1510 (g)(ii), requires that an owner or operator of an affected source using an afterburner to comply with the Subpart RRR NESHAP must record temperature in 15-minutes block averages and determine and record the average temperature for each 3-hour block period.

55. According to the Subpart RRR NESHAP, at 40 C.F.R. § 63.1517(a)(1), the owner or operator must retain each record required under the Subpart RRR NESHAP for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site.

56. The Furnace was subject to afterburner temperature operating recordkeeping requirements of 40 C.F.R. §§ 63.1510(g)(ii), and 63.1517(a)(1) on and after March 24, 2003. 40 C.F.R. § 63.1501(a).

57. No records were kept of the 15-minute average and 3-hour block average operating temperatures for the Furnace's afterburner from the period lasting from March 24, 2003 until August 26, 2004.

58. As an operator of the Furnace, Respondent was required to keep records of 15-minute average and 3 hour block average afterburner operating temperatures under 40 C.F.R. §§ 63.1510(g)(ii), and 63.1517(a)(1).

59. Respondent failed to have records kept of 15-minute average and 3-hour block average operating temperatures for the Furnace's afterburner while it was an operator of the Furnace, for a period lasting as early as September 2003 through August 26, 2004, or a period lasting at least 10 months.

60. Failure to maintain adequate records required by the Subpart RRR NESHAP is a violation of 40 C.F.R. §63.1517(a)(1) and Section 112 of the Act, 42 U.S.C. §7412.

Count IV

61. Complainant incorporates paragraphs 1 through 36 of this Complaint, as if set forth in this paragraph.

62. The Subpart RRR NESHAP, at 40 C.F.R. § 63.1505(f)(1), states that the owner or operator of a "sweat furnace" is not required to conduct a performance test to demonstrate compliance with the emission standard of paragraph (f)(2) of this section, provided that on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of 1600 degrees Fahrenheit or greater.

63. The subpart RRR NESHAP, at 40 C.F.R. § 63.1506(a)(2) provides that the owner or operator of an existing sweat furnace that meets the specifications of 40 C.F.R. § 63.1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of § 63.1506 on or after the compliance date of this rule. Under 40 C.F.R. § 63.1506(h), the owner or operator of a sweat furnace with emissions controlled by an afterburner must maintain the 3-hour block average operating temperature of the

afterburner at or above 1600 degrees Fahrenheit if a performance test was not conducted, and the afterburner meets the specifications of 40 C.F.R. § 63.1505(f)(1).

64. During each month of September 2004 through July 2005, the Furnace's afterburner emission control device did not consistently maintain a minimum 3-hour block average operating temperature of 1,600 degrees Fahrenheit.

65. During the months of September 2004 through July 2005, the Furnace's afterburner had at least 627 deviations (besides those 3-hour blocks for which no operating temperatures were recorded) of the minimum 3-hour block average operating temperature of 1,600 degrees Fahrenheit.

66. As an operator of the Furnace, Respondent was required to maintain the Furnace's afterburner 3-hour block average operating temperature at or above 1,600 degrees Fahrenheit.

67. Respondent failed to consistently keep the Furnace's afterburner operating temperature maintained at or above 1,600 degrees Fahrenheit during every month from September 2004 through May 2005, or a period lasting at least 9 months.

68. Failure to maintain a sweat furnace's afterburner at or above minimum 3-hour block average operating temperature of 1,600 degrees Fahrenheit is a violation of 40 C.F.R. §§ 63.1505(f)(1), 63.1506(a)(2), and 63.1506(h), and Section 112 of the Act, 42 U.S.C. §7412.

Proposed Civil Penalty

69. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative

penalty under Section 113(d). 42 U.S.C. § 7413(e).

70. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$145,926. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). The evaluation also considered the September 21, 2004, U.S. EPA policy memorandum "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)." Enclosed with this complaint is a copy of the penalty policy.

71. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

72. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2004) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

73. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

74. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Mark Palermo to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mark Palermo at (312) 886-6082. Mark Palermo's address is:

Mark Palermo (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Penalty Payment

75. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency-
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Mark Palermo and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Opportunity to Request a Hearing

76. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 77 through 82 below.

Answer

77. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 73, above, and must serve copies of the written answer on the other parties.

78. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

79. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

80. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation under the Consolidated Rules.

81. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 76, above.

82. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a

default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

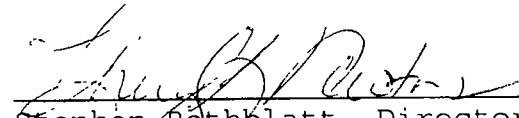
83. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Mark Palermo at the address or phone number specified in paragraph 74, above.

84. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

85. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

3/31/06
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

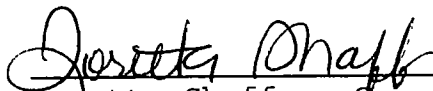
In the Matter of Remelt Services, Incorporated
Docket No. CAA -05-2006-002022.

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

US
POSTAL
SERVICE
REGION 5
MAR 31 10:32
REG 5

on the 31ST day of March, 2005.


Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1447 8997